REMARKS

Reconsideration and allowance of the above identified application are requested.

Specification

The Applicant cancels the amendments to the specification as provided in the Applicant's September 2, 2004, response to the Office action mailed May 5, 2004. Although the Applicant believes the amendments in the September 2, 2004, response are within the scope of the original disclosure, the Applicant cancels the amendment because such cancellation is a requirement set forth by the Examiner in the subsequent Office action mailed November 30, 2004. The Applicant cancel the amendments with the understanding that such cancellation does not prejudice any right of the Applicant to appeal any related rejections, petition any related objections, and further amend the specification within the scope of the original disclosure.

Although the Applicant cancels the prior amendment, the Applicant further amends the paragraph of specification that starts on page 2, line 30 to clarify the claimed invention within the scope of the original application. The Applicant's invention claims cookies made with an emulsified liquid shortening composition comprising dietary fiber gel. The dietary fiber gel of the invention is disclosed by Inglett (U.S. Patent, Number 5,766,622, dated June 16, 1998), which was incorporated by reference into the original as-filed application at page 2, line 31. Information included by reference is "as much a part of the application as filed . . . , and should be treated as part of the text of the application as filed." MPEP § 2163.07(h). Clearly, dietary fiber gel as disclosed by Inglett is part of the as-filed application.

Inglett teaches at Col. 1, lines 9-12, that it is well known that "[d]ietary fibers are generally considered to be the soluble and insoluble components of cell walls . . . [and] consist primarily of cellulose, hemicellulose," and so forth. In the process of the invention, Inglett at Col. 3, lines 24-32, explicitly teaches that "[f]ollowing at least the second stage of treatment . . . the solids are separated for the liquids and the recovered insolubles are carried forward to the next processing step, [wherein] the second stage separation is intended to isolate and recover the gel product of this invention," i.e., dietary fiber gel. The source of the dietary fiber is agricultural by-products such as grain seed brans, hulls, and so forth is noted by Inglett at Col. 3, lines 3-8.

Inglett implicitly teaches that dietary fiber gel is insoluble dietary fiber derived from the alkaline treatment of agricultural by-products. Inglett at Col. 3, line 33 to Col. 4, line 36 teaches the first stage of treatment is "preferably in the range of about . . . pH 9-13. The gel products . . . contained in the insoluble fraction . . . from the first stage . . . are subjected to [a] second stage . . . [of] treatment . . . at alkali pHs, preferably in the range of 7-12. Following the second stage . . . solids are again separated from the liquids . . . [and] the recovered solids consist of cellular debris in the form of a hydrated gel. The gel may be dried." One skilled in the art would know that solids separated from liquid after the second stage are implicitly insoluble dietary fiber. Clearly, because Inglett explicitly and implicitly teaches dietary fiber gel as the insoluble component of dietary fiber that can be recovered and formed into a gel, so does the as-filed application.

As to the physical form and characteristics of the dietary fiber gel, Inglett at Col. 5, lines 43-45, explicitly teaches that dietary fiber gel "may exist in either the hydrated form as gels or in the dehydrated form as flakes or powder." At Col. 4, lines 30-32, the hydrated gel is described as "white or very light in color, [and] has little or no flavor, [and] a smooth texture."

Inglett inherently teaches an amorphous dietary fiber gel because the gel exhibits a smooth morphology. For example, at Col. 4, line 63 to Col. 5, line 3, Inglett teaches that dietary fiber gel has "a smooth sheet- or film-like morphology" based on scanning electron photographs at magnifications of 500-1000X, and "[t]he smoothness of the original gels are restored after reconstitution of the dried products." Typically, crystal structures are characterized by sharp edges that result in rough, jagged, and under scanning electron microscopic magnification a generally non-smooth morphology such that one skilled in the art would know that dietary fiber gel that has a smooth morphology would be inherently amorphous.

Thus, dietary fiber gel in the Applicant's invention comprises non-particulate amorphous insoluble dietary fiber derived from the alkaline treatment of agricultural by-products. Although the specification has been amended so as to more reasonably convey the invention, and more specifically what dietary fiber gel is to one skilled in the art, the amendments to the specification are expressly, implicitly, or inherently supported by the Inglett patent, a part of the original as-filed application.

In addition, the Applicant further amends the specification within the scope of the original application to further clarify the claimed invention so as to comply with the enablement

requirement. The Applicant amends the specification by moving the paragraph that starts on page 2, line 39 to before the paragraph that starts on page 3, line 68. The moved paragraph is further amended to more fully describe the claimed invention within the scope of the original application. The Applicant's invention claims cookies made with an emulsified liquid shortening composition comprising dietary fiber gel. The emulsified liquid shortening compositions are fully described in and are the subject of United States patent application number 10/669731 filed 09/24/2003, which was incorporated by reference into the original as-filed application at page 2, lines, 41-42. The dietary fiber gel of the invention is disclosed by Inglett (U.S. Patent, Number 5,766,622, dated June 16, 1998), which was incorporated by reference into the original as-filed application at page 2, line 31. Information included by reference is "as much a part of the application as filed . . . , and should be treated as part of the text of the application as filed." MPEP § 2163.07(h). Clearly, how emulsified liquid shortening compositions are made as disclosed in United States patent application number 10/669731 and how dietary fiber gels are made as disclosed by Inglett are part of the as-filed application.

Application 10/669731 discloses at page 5, line 120 to page 6, line 135 the ingredients of and how to make emulsified liquid shortening compositions. The ingredients that include dietary fiber gel, water, and lipid are simply combined and mixed, and the mixture is subjected to high shear micro-particulation. The relative quantity of the ingredients is disclosed in the claims. For example, claim 1 discloses that "30 to 80 percent of the composition by weight" is water; "0.3 percent to 20 percent of the composition by weight" is dietary fiber gel; and the balance is lipid and optionally ingredients such as emulsifier and functional foods. Application 10/669731 further discloses at page 4, lines 79-80, that the lipid can be "any oleic fatty acids, flax seed oil, olive oil, canola oil, corn oil, walnut oil, peanut oil, and any other vegetable oil, and any combination" of these oil.

Application 10/669731 also discloses how the dietary fiber gel, water, and lipid are combined and mixed to make emulsified liquid shortening. For example at page 6, lines 125-27 teach "high shear micro-particulation . . . after fiber gel had been combined" with other ingredients. At page 6, lines 128-30, types high shear mixing that would be well known to one skilled in the art "include homogenization, . . . colloid milling and ultrasonication treatment." Operating conditions that include pressures from 1500 to 2500 pounds per square inch, and temperature from 120 to 195 degrees Fahrenheit are described at page 6, lines 130-133.

Operating conditions are also characterized by fat droplet, i.e. lipid, sizes in the range of 5-50 microns at line 6, lines 133-35. Clearly, Application 10/669731 discloses how to make emulsified liquid shortening from dietary fiber gel, water, and lipid, and what lipids can be used.

How dietary fiber gel is made is fully disclosed in Inglett. Dietary fiber gel can come directly from a process that shears agricultural by-products under alkaline conditions. As Inglett discloses at Col. 4, lines 30-33, "the recovered solids consist of cellular debris in the form of a hydrated gel," i.e. dietary fiber gel. A specific example in which oat hulls are extruded and then sheared in a Waring™ to produce such a gel is given in Example 1.

Alternatively, dietary fiber gel can be reconstituted from dried solids. Inglett discloses at Col. 4, line 33-36, that the "gel [from the previously mention process] may be dried by any conventional means" to produce a dry product. A specific example of a dried product produced by oven drying is disclosed in Example 2. As disclosed at Col. 4, lines 37-44, "the dried products are readily dispersible in water and can be hydrated to give high viscosity gels," wherein rehydration is "carried out by subjecting the dried solids to high shear in the presence of water." Specific examples of the drying of an as-produced gel followed by rehydration to reconstitute a gel are given in Examples 3 (freeze drying and reconstitution at 3% solid level by blending with water in a Waring™ blender for 5 min. at 25 deg C); Example 4 (freeze drying and drum drying with reconstitution by vigorous stirring); Example 6 (spray drying and reconstitution with water in a Waring™ blender; and Example 7 (spray drying and reconstitution with water in a Waring™ blender for 5 minutes). Clearly, Inglett discloses how to make as produced and reconstituted dietary fiber gel.

Thus, how to make dietary fiber gel and how to make emulsified liquid shortening is fully disclosed in the references incorporated by reference in the Applicant's original disclosure. Although the specification has been amended so as to more reasonably convey the invention, and more specifically how dietary fiber gel and emulsified liquid shortening are made to one skilled in the art, the amendments to the specification are supported by the Inglett patent and Application 10/669731 which are part of the original as-filed application.

35 U.S.C. § 112, first paragraph Claim Rejection—written description.

Amended Claims 1 and 2 were rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement because the amended claims included a limitation that the Examiner alleges is not supported in the original disclosure. Although the Applicant believes the amendments in the September 2, 2004, response are within the scope of the original disclosure, the Applicant cancels the amendment because such cancellation is a requirement set forth by the Examiner in the subsequent Office action mailed November 30, 2004. The Applicant cancel the amendments with the understanding that such cancellation does not prejudice any right of the Applicant to appeal any related rejections, petition any related objections, and further amend the specification within the scope of the original disclosure. Further, the Applicant believes that the amended specification more fully describes dietary fiber gel within the scope of the original application and makes the previous amendment to the claims unnecessary.

35 U.S.C. § 132 Objection—new matter.

The Applicant traverses the objection to the specification, as amended, by canceling the amendments in the September 2, 2004, response, and further amending the specification as provided for and discussed above.

35 U.S.C. § 112, first paragraph Claim Rejection—enablement.

The Applicant traverses the rejection of Claims 1 and 2 by amending specification within the scope of the original disclosure including incorporated references as provided for and discussed above. The amended specification more clearly discloses how dietary fiber gel and emulsified liquid shortening are made. The test for enablement depends on whether one skilled in the art can make and use the invention without undue experimentation. MPEP 2164.01. Finding enablement requires the consideration of "the nature of the invention, the state of the prior art, and the level of skill in the art." MPEP 2164.05(a). The invention disclosed in the specification, as amended, solves the problem of using a new and previously unknown food ingredient, dietary fiber gel, in food compositions. The nature of Applicant's invention as disclosed in the specification, as amended, involves the physical mixing of relatively well-known and common food ingredients such as water, vegetable oil, butter, and so forth and a new

ingredient that happens to unexpectantly behave like familiar well-known food ingredients such as flour, Crisco™, and so forth. Further, the prior art frequently used known mechanically mixing technology such as homogenizers, blenders, colloid mils, extruders, and so forth. As known to one skilled in the art, operating pressures of 1500 to 2500 pounds per square inch are modest and well within known technology limits. Finally, the level of skill in the art could reasonably be assumed to any food scientist or technician familiar with mixing and blending food ingredients. Under these considerations, clearly the specification, as amended, is enabling.

35 U.S.C. § 103 Claim Rejection.

The Applicant traverses the rejection of Claims 1 and 2 as obvious under 35 U.S.C. § 103 (a) because Young et al in view of Stone and Leitz et al, as cited in the Examiner's Office Action, teaches bakery food products, including cookies, that comprise shortening substitutes. The shortening substitutes comprise two components, a gelatinous aqueous phase and a lipid phase, wherein the gelatinous aqueous phase is a gelatin formed from water and a gelling agent. The gelling agent includes at least konjac, a soluble fiber, and that optionally can further include micro-crystalline cellulose, which is arguably an insoluble fiber. The Applicant's invention on the other hand discloses cookies that comprise an emulsified shortening comprising dispersed insoluble fiber in the form of a dietary fiber gel, water and lipid.

The References Do Not Teach the Claimed Invention

There is nothing disclosed in Young et al in view of Stone and Leitz et al that teaches the modification of the references suggested by the Examiner. Obviousness depends on the differences between a claimed invention and the prior art. *35 U.S.C. § 103(a)*. The establishment of obviousness requires that the prior art must teach or suggest all the limitations of the claimed invention. *In re Royka*, 490 F.2d 981, 984-85 (CCPA 1974). The Applicant traverses the rejection because nothing in Young et al in view of Stone and Leitz et al teaches all the elements and limitations of the Applicant's claimed invention.

Young et al teach shortening substitutes that comprises two components, a gelatinous aqueous phase and a lipid phase. The gelatinous aqueous phase is a gelatin formed from water and gelling agent that includes at least konjac, a soluble fiber. Konjac is derived from the tubers of a plant known as elephant yam, and is a polymer of glucose and mannose, more generally

known as a polysaccharide. Young et al further teach that the gelling agent can be a combination of ingredients that includes konjac with other soluble or insoluble but dispersible fiber such as micro-crystalline cellulose. Separately, Stone teaches that konjac is a soluble dietary fiber, and although Leitz et al teach that micro-crystalline cellulose is an insoluble fiber, one skilled in the art would know that micro-crystalline cellulose is derived from insoluble fiber that has been highly refined such that micro-crystalline cellulose is not per se insoluble fiber. Thus, the combination of references, Young et al in view of Stone and Leitz et al, teaches shortening substitutes that comprise a gelatin phase and a lipid phase, wherein the gelatin phase comprises water and at least the soluble gelling agent, konjac. Optionally, the gelling agent can further comprise micro-crystalline cellulose, which is derived from insoluble fiber. The applicant's invention on the other hand teaches an emulsified liquid shortening that comprises a dispersed insoluble dietary fiber in the form of a dietary fiber gel, water, and lipid. No combination of the cited prior art references teach the claimed invention, cookies comprising emulsified liquid shortening comprising dispersible insoluble dietary fiber, water, and lipid.

For example and as noted by the Examiner, Young et al at Col. 3, lines 7-12, teach "a shortening substitute . . . that has an aqueous phase containing water and konjac as a gelling agent and a lipid phase." Thus, Young et al teach a shortening substitute having a gelatinous aqueous phase made up of water and a gelling agent. One skilled in the art would know, and as implicitly taught by Young et al at Col. 6, lines 13-20, that gelling agents are an essential part of a "gel network or matrix" that makes up the gelatinous aqueous phase. To control melt characteristics at Col. 6, lines 24-46, Young et al teach that the gelling agent can be a combination of compounds that include "the presence of one or more other hydrocolloids in addition to the konjac," wherein other hydrocolloids includes micro-crystalline cellulose. As noted by the Examiner, Stone teaches at Col. 2, line 28 and that "[k]onjac . . . is a soluble dietary fiber," and although Leitz et al may have mischaracterized micro-crystalline cellulose by stating at Col. 5, lines 28-30, that "micro-crystalline cellulose is an insoluble fiber," one skilled in the art would know that micro-crystalline cellulose is at least derived from insoluble fiber. Thus, the combined references teach shortening substitutes that comprise gelling agents that form a gel matrix and that include soluble dietary fiber, and optionally micro-crystalline cellulose, which is arguably insoluble fiber, and not dispersed insoluble dietary fiber in the form of a dietary fiber gel.

Further, fiber is a chemically complex and chemically diverse substance that is available from a variety of natural plant sources such as wood pulp, tubers from specific plants such as elephant yam, and agricultural by-products such as seed brans, hulls, and so forth. Raw fiber is typically a solid that can be processed to produce a wide variety of products. One skilled in the art would know fiber products depend on the fiber source and the processing.

Young et al teach fiber produced by grinding and washing elephant yam plant tubers. For example, Young et al at Col. 4, lines 32-41, teaches konjac, a soluble fiber, "is naturally derived material . . . obtained from the tuber of the plant *Amorphophallus konjac* (elephant yam). The . . . tubers are ground . . . [and] recovered as konjac powder or flour . . . [that] has typically been washed, e.g., with water and/or alcohol." Clearly, Young et al teach shortening substitutes comprising fiber derived from the grinding and washing elephant yam tubers, and not insoluble dietary fiber derived from the alkaline treatment of agricultural by-products.

Although Young et al, and Leitz et al disclose the use of micro-crystalline cellulose, neither reference disclosed how micro-crystalline cellulose is produced. One skilled in the art would know that micro-crystalline cellulose in typically produced by highly refining insoluble wood fiber such that the identity as an insoluble fiber is lost and only a basic chemical identity remains. Thus, the gelling agent taught by Young et al can be a combination of konjac and micro-crystalline cellulose, and such a combination is a different compound than the dietary fiber gel disclosed in the Applicant's application which comes from the alkaline treatment of agricultural by-products.

The References Lack Any Suggestion to Combine

There is nothing disclosed in Young et al in view of Stone and Leitz et al that teaches the modification of the references suggested by the Examiner. Obviousness requires that the suggestion to make the claimed invention must found in the prior art. *In re Vaeck*, 947 F.2d 488, 493 (Fed. Cir. 1991). Such a suggestion is lacking in the cited reference. Even if the references fully taught the Applicant's invention, the Applicant traverses the rejection because nothing in Young et al in view of Stone and Leitz et al affirmatively suggests making the cited combination.

Young et al teach teaches bakery food products including cookies that comprise shortening substitutes comprising a gelatinous aqueous phase and a lipid phase. The aqueous phase is a gelatin formed from water and a gelling agent that forms a gel network or matrix. The

gelling agent includes at least the soluble fiber, konjac, and optionally includes micro-crystalline cellulose. The Applicant's invention on the other hand teaches a shortening substitute comprising dietary fiber gel, water, and lipid. The dietary fiber gel includes insoluble dietary fiber that is dispersible in water, but does not dissolve in water and does not form a gel network or matrix in the aqueous phase. Nothing in Young et al, Stone, and Leitz et al teaches or suggests shortening substitutes comprising dietary fiber gel that are dispersions of insoluble fiber.

For example at Col. 3, line 65 to Col. 4, line 3, Young et al teach that "shortening substitutive . . . have an aqueous phase containing konjac . . . , and a lipid phase." At Col. 4, lines 25-26, Young et al specifically point out that "the presence of konjac as a gelling agent in the aqueous phase of the emulsion." When discussing water-in-oil emulsions Young et al at Col. 9, lines 23-27, points out "the aqueous phase is dispersed throughout the continuous oil phase, preferably as small gelled droplets . . . i.e. the konjac-containing aqueous phase." In addition when discussing melt characteristics, Young et al at Col. 6, lines 17-20, further implicitly teaches that the gelling agent, konjac that is optionally combined with other hydrocolloids, form a "gel network or matrix." Further, Stone at Col. 2, lines 27-31, points out that "[k]onjac flour is a soluble dietary fiber that . . . is typically used as a . . . gelling agent." Clearly, Young et al and Stone teach a gelatinous aqueous phase made up of water and a water soluble fiber that form a gel network or matrix, and do not teach or suggest the dispersion of an insoluble dietary fiber to form a gel.

Separately, Leitz et al teach the non-analogous art of dietary supplement tablets, generally a solid mixture, that use micro-crystalline cellulose as an excipients in combination with other compounds. For example at Col. 5, line 22-26, Leitz et al teach that "[t]he preferred tablet of the present invention contains a variety of excipients including two fiber excipients. The fiber excipients are acacia gum and microcrystalline cellulose." Further, Leitz et al's teachings at Col. 5, lines 28-30, are directed towards the use micro-crystalline cellulose "to improve the compressibility of the tablet," and not towards gelatin and dispersion formation properties. Clearly, Leitz et al teach solid tablets formulated with micro-crystalline cellulose to improve compressibility, and do not teach or suggest the dispersion of an insoluble dietary fiber to form a gel.

Combining the References Lacks a Reasonable Expectation of Success

There is nothing disclosed in Young et al in view of Stone and Leitz et al that teaches a reasonable expectation of success in combining the references as suggested by the Examiner. Obviousness exists when the references provide a reasonable expectation of success for the proposed combination. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097-98 (Fed. Cir. 1986). Whether the combination is obvious or unobvious requires consideration of all the evidence and resultant findings. *In re Rinehart*, 531 F.2d 1048, 1052 (CCPA 1976). Such an expectation of success is lacking in the cited reference. Even if the references fully taught the Applicants invention, the Applicant traverses the rejection because nothing in Young et al in view of Stone and Leitz et al leads to an expectation of success for the identified combination.

Young et al and Stone teaches a very specific soluble fiber compound derived from the grinding and washing of the tuber from a specific plant, *Amorphophallus konjac*, while the dietary fiber disclosed in the Applicant's application comes from the alkaline treatment of agricultural by-products. Fiber, which is naturally produced by plants, is a chemically complex and chemically diverse substance that is available from a variety of sources such as wood pulp, plant tubers, and agricultural by-products such as seed brans, hulls, and so forth. Raw fiber is typically a solid that can be processed to produce a wide variety of products. One skilled in the art would know that fiber products, such as dietary fiber gels, depend on the fiber source and the processing.

The Applicant's invention claims cookies comprising an emulsified liquid shortening, a shortening substitute, comprising dietary fiber gel derived from agricultural by-products grains such as seed brans, hulls, and so forth. The specification, as amended, discloses that the dietary fiber gel in the Applicant's invention comprises insoluble dietary fiber derived from the alkaline treatment of agricultural by-products. Nothing in the cited references teach any expectation that an insoluble fiber derived from the alkaline processing of agricultural by-products can be used in a shortening substitute formulation based on the very specific soluble fiber derived from the tuber of a specific plant known as *Amorphophallus konjac*.

For example, Young et al at Col. 4, lines 32-41, teaches konjac, a soluble fiber, "is naturally derived material . . . obtained from the tuber of the plant *Amorphophallus konjac* (elephant yam). The . . . tubers are ground . . . [and] recovered as konjac powder or flour . . . [that] has typically been washed, e.g., with water and/or alcohol." Clearly, Young et al does not

teach any expectation that dietary fiber gel derived from the alkaline treatment of agricultural by-products that substantially disrupts cellular structure can be successfully used in a formulation of a shortening substitute that comprises a gelled aqueous phase having a gelling agent that is a soluble fiber derived for the tuber of a very specific plant, *Amorphophallus konjac*. Similarly, Stone does not teach any expectation that soluble fiber derived for the tuber of a very specific plant, *Amorphophallus konjac* can successfully be used in place of dietary fiber gel derived from the alkaline treatment of agricultural by-products that substantially disrupts cellular structure.

Young et al, and Leitz et al disclose the use of micro-crystalline cellulose, but neither reference disclosed how micro-crystalline cellulose is produced. One skilled in the art would know that micro-crystalline cellulose in typically produced by highly refining insoluble wood fiber such that the identity as an insoluble fiber is lost and only a basic chemical identity remains. In addition, Leitz et al implicitly teach that micro-crystalline cellulose is derived from insoluble fiber because at Col. 1, lines 33-35, Leitz et al teach that "[i]nsoluble dietary fiber is made up of lignin, cellulose and hemicellulose." Accordingly, Leitz et al's characterization at Col. 5, lines 28-30, that "[m]icrocrystalline cellulose is an insoluble fiber" can be misleading. A more accurate characterization is that micro-crystalline cellulose is derived from insoluble dietary fiber. Thus, the gelling agent taught by Young et al can be a combination of konjac and micro-crystalline cellulose, and is a different compound than the dietary fiber gel disclosed in the Applicant's application which comes from the alkaline treatment of agricultural by-products.

Finally, Leitz et al teach the non-analogous art of dietary supplement tablets, generally a solid mixture, that use micro-crystalline cellulose as an excipients in combination with other compounds. For example at Col. 5, line 22-26, Leitz et al teach that "[t]he preferred tablet of the present invention contains a variety of excipients including two fiber excipients. The fiber excipients are acacia gum and microcrystalline cellulose." Further, Leitz et al's teachings at Col. 5, lines 28-30 are directed towards the use micro-crystalline cellulose "to improve the compressibility of the tablet," and not towards gelatin and dispersion formation properties. Clearly, Leitz et al teach solid tablets formulated with micro-crystalline cellulose used as an excipient to improve compressibility in solid tablets and other mixed solids formulations, and there is no reasonable expectation that insoluble dietary fiber derived from the alkaline treatment of agricultural by-products can be successfully dispersed in water and lipid.

Applicant has amended the specification to clarify the foregoing distinctions. The specification has been amended to more reasonably convey the invention, and more specifically dietary fiber gel, how to make dietary fiber gel, and how to make emulsified liquid shortening from dietary fiber gel to one skilled in the art. Although the specification has been amended so as to more reasonably convey the invention to one skilled in the art, the amendments to the specification are expressly, implicitly, or inherently supported by the Inglett patent and Application No. 10/669731, a part of the original as-filed application. In view of the amendment to the specification, and above arguments, Applicant requests that the rejection of Claims 1-2 as failing to comply with the written description requirement under 35 U.S.C. § 112, first paragraph; as failing to comply with the enablement requirement under 35 U.S.C. § 112, first paragraph; and as being obvious under 35 U.S.C. § 103 (a) be withdrawn. Further, in view of the amendment to the specification, and above arguments, Applicant requests that the objection of the previous amendment of the specification as introducing new matter into the disclosure of the invention under 35 U.S.C. § 132 be withdrawn

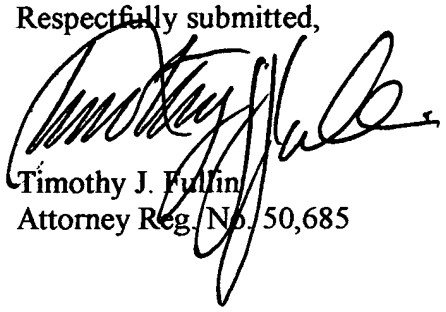
The shortening substitutes as in the cited references, Young et al in view of Stone and Leitz et al, are functionally different from the Applicant's invention. In the cited reference, shortening substitution is through the use of a gelled aqueous phase or gelatin that includes a gelling agent so as to form a gel network or matrix. In the Applicant's invention, there is no aqueous phase gelatin because dietary fiber gel is a dispersion of insoluble dietary fiber. Applicant's use of an insoluble fiber derived shortening substitute is not taught in the mentioned references.

Further, the cited shortening substitutes of Young et al in view of Stone and Leitz et al comprise compounds that are different from the Applicant's invention, such that the Applicant's shortening substitute is a compound that differs from the cited shortening substitutes. In Young et al in view of Stone and Leitz et al, the shortening substitute comprises gelling agents and does not comprise a dispersible insoluble dietary fiber. However, the Applicant's shortening substitute comprises dispersed insoluble dietary fiber in the form of dietary fiber gel such that the Applicant's shortening substitute is a different compound than taught in the cited reference. Because the Applicant's shortening substitute is a different compound than known shortenings or shortening substitutes, the amount of shortening substitute that replaces shortening in the cookie

formulations, and the resulting solids content of the cookies, can be different depending on the desired taste, flavor, and texture such that the use of any known cookie formulation would be unobvious.

Applicant believes that the amended patent application is now in condition for allowance. Accordingly, the Applicant respectfully requests that a Notice of Allowance be issued in this case. The Examiner is invited to contact the undersigned by telephone or facsimile if the Examiner believes this would advance the prosecution of the matter.

Respectfully submitted,



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February 24, 2005
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